

1 UNITED STATES DISTRICT COURT

2 WESTERN DISTRICT OF TEXAS

3 SAN ANTONIO DIVISION

4 UNITED STATES OF AMERICA, § CRIMINAL NO. 5:12-102-OLG-1

5 §

6 §

v. § March 31, 2014

7 ANTONIO PENA ARGUELLES, §

8 §

DEFENDANT. §

9 TRANSCRIPT OF REARRAIGNMENT
10 BEFORE THE HONORABLE ORLANDO L. GARCIA
11 CHIEF DISTRICT COURT JUDGE

12 APPEARANCES:

13 For the Government: CHARLIE STRAUSS, AUSA
14 CHARLIE LEWIS, AUSA
15 MARY NELDA VALADEZ, AUSA
Office of US Attorney
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San Antonio, Texas 78216

16 For the Defendant: GERALD HARRIS GOLDSTEIN, ESQ.
17 VAN HILLEY, ESQ.
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25 transcription

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P-R-O-C-E-E-D-I-N-G-S

THE COURT: Okay. You may be seated. I'll proceed to call U.S. v. Antonio Pena Arguelles, Cause number 12-CR-102.

MR. STRAUSS: Good afternoon, Your Honor. Charlie Strauss for the United States.

THE COURT: Okay.

MR. STRAUSS: And also Charlie Lewis, Special Assistant from the Southern District of Texas.

THE COURT: Okay.

MR. STRAUSS: And I assume in a few moments, Mary Nelda Valadez from our office will be here.

THE COURT: Okay. All right. Thank you.

MR. STRAUSS: She is also representing the government.

THE COURT: Thank you.

MR. GOLDSTEIN: Jerry Goldstein together with Van Hilley. We represent Mr. Pena. Cynthia Orr is also counsel of record. She is in Austin with the Court of Appeals this afternoon.

MR. STRAUSS: Okay.

MR. GOLDSTEIN: And we have three lawyers too.

THE COURT: Okay. Indeed. If you and your client will come over here, please. Thank you.

Jessica, if you will swear in Mr. Pena.

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1 THE COURTROOM DEPUTY: Yes, Your Honor. Please
2 raise your right hand.

3 Do you solemnly swear to tell the truth, the whole
4 truth, and nothing but the truth so help you God?

5 DEFENDANT PENA ARGUELLES: I do swear.

6 THE COURTROOM DEPUTY: Thank you.

7 THE COURT: Okay. Mr. Pena, do you wish to be
8 called Mr. Pena or Mr. Arguelles?

9 DEFENDANT PENA ARGUELLES: Pena.

10 THE COURT: Pena. Okay. Mr. Pena, the Court
11 understands that you wish to plead guilty to Count One of the
12 superseding information returned on March 27, 2014. Is this
13 correct?

14 DEFENDANT PENA ARGUELLES: It's correct, Your
15 Honor.

16 THE COURT: Mr. Goldstein, how long have you
17 represented the defendant and on how many occasions have you
18 had an opportunity to talk to your client and discuss this
19 case?

20 MR. GOLDSTEIN: I believe we had -- our firm has
21 represented Mr. Pena for over two years, Your Honor. I have
22 had hundreds of meetings with him as have my able-counsel,
23 Mr. Hilley and Ms. Orr. And I believe we have spent
24 considerable time together.

25 THE COURT: Okay. So you have had sufficient time

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1 to review his case with him?

2 MR. GOLDSTEIN: I have, Your Honor.

3 THE COURT: Okay. Do you have any doubt,
4 Mr. Goldstein, as to your client's competence to proceed in
5 this matter and enter a plea at this time?

6 MR. GOLDSTEIN: I do not, Your Honor, and I believe
7 he understands both the consequences of that plea and the
8 factual basis.

9 THE COURT: So you believe he has both a factual as
10 well as a rational understanding of the proceedings, and he
11 has sufficient present ability to consult with you within a
12 reasonable degree of rational understanding. Is this
13 correct?

14 MR. GOLDSTEIN: I do, Your Honor.

15 THE COURT: Okay. Then let me ask, Mr. Pena, have
16 you ever suffered or do you suffer now from any mental or
17 physical impairment which could have an effect on your
18 ability to understand the charge against you? In other
19 words--.

20 DEFENDANT PENA ARGUELLES: Not at any time.

21 THE COURT: Okay. At any time. Okay. Are you
22 presently under the influence of any medication, drug, or
23 alcohol, or anything that might prevent you from
24 understanding today's proceeding?

25 DEFENDANT PENA ARGUELLES: No, Your Honor.

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1 THE COURT: Okay. I'll ask the prosecutor, the
2 Assistant U.S. Attorney, to summarize the plea agreement. I
3 have reviewed the plea agreement which has been on file.

4 MR. STRAUSS: Your Honor, the defendant is pleading
5 guilty to the superseding information that was charged as a
6 conspiracy to launder monetary instruments. The government
7 basically in exchange for that is making a recommendation
8 pursuant to Rule 11C1C of the Federal Rules of Criminal
9 Procedure, a binding recommendation of a 30-month sentence.

10 THE COURT: Okay. And let me ask, Mr. Pena, have
11 you had an opportunity to review the written plea agreement?
12 That is the document, the agreement between the government,
13 yourself, and your attorney?

14 DEFENDANT PENA ARGUELLES: Absolutely. Yes.

15 THE COURT: And you understand the complete plea
16 agreement?

17 DEFENDANT PENA ARGUELLES: Yes, Your Honor.

18 THE COURT: And have you signed the plea agreement?

19 DEFENDANT PENA ARGUELLES: Yes, sir.

20 THE COURT: Do you have any questions?

21 MR. GOLDSTEIN: If I may interrupt. He signed the
22 agreement, and it was interrupted for him and translated for
23 him by Mr. John Brown, who has been providing those services
24 for us.

25 THE COURT: Okay.

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1 MR. GOLDSTEIN: And I think Mr. Brown has indicated
2 the same on the file copy, Your Honor.

3 THE COURT: Okay. And so do you understand the
4 plea agreement, Mr. Pena?

5 DEFENDANT PENA ARGUELLES: Yes, sir.

6 THE COURT: And do you agree to the terms of the
7 plea agreement?

8 DEFENDANT PENA ARGUELLES: Totally. I'm in
9 agreement with them.

10 THE COURT: Okay. You are charged in Count One of
11 the superseding information with conspiring to launder money
12 instruments in violation of 18 U.S. Code, Section 1956H. Do
13 you understand that you have the right to plead not guilty to
14 the charge?

15 DEFENDANT PENA ARGUELLES: Yes, I do understand.

16 THE COURT: Knowing this, how do you plead? Guilty
17 or not guilty to the charge just named?

18 DEFENDANT PENA ARGUELLES: I plead guilty.

19 THE COURT: Before accepting your plea of guilty,
20 there are a number of rights I wish to advise you of. There
21 will be a number of questions I will ask of you. If you do
22 not understand any of these rights or questions or at any
23 time wish to consult with your lawyer, please let me know.
24 Okay.

25 DEFENDANT PENA ARGUELLES: Yes, sir.

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1 THE COURT: Okay. Have you had enough time,
2 Mr. Pena, to fully discuss your case and possible defenses to
3 the charges that you have? Have you had enough time to
4 discuss this matter with your lawyer?

5 DEFENDANT PENA ARGUELLES: Yes, Your Honor, lots of
6 time.

7 THE COURT: Are you satisfied with your attorney's
8 representation of you?

9 DEFENDANT PENA ARGUELLES: Totally and absolutely.

10 THE COURT: And have you received a copy, Mr. Pena,
11 of the superseding information stating the charge against
12 you, that is, have you received the copy of the charge?

13 DEFENDANT PENA ARGUELLES: Yes, Your Honor.

14 THE COURT: And have you read it or has it been
15 read to you?

16 DEFENDANT PENA ARGUELLES: Yes, Your Honor.

17 THE COURT: And have you discussed with your
18 attorney the charge and the superseding information to which
19 you intend to plead guilty to?

20 DEFENDANT PENA ARGUELLES: Yes, Your Honor.

21 THE COURT: Okay. Mr. Goldstein, I'll now ask the
22 Assistant U.S. Attorney to formally read the charge, unless
23 you waive the reading of the charge. I'm asking you,
24 Mr. Goldstein, do you waive the reading of the charge?

25 MR. GOLDSTEIN: I certainly will waive it, Your

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1 Honor.

2 THE COURT: Let me ask Mr. Pena, do you
3 understand -- I know some of these questions, Mr. Pena, are
4 going to sound repetitive. They are necessary for the whole
5 process. If at any point you don't understand something,
6 please let me know. I will restate it or let you confer with
7 your lawyers. Do you understand the charge?

8 DEFENDANT PENA ARGUELLES: Yes, I do understand it.

9 THE COURT: Do you have any questions concerning
10 the charge and the superseding information?

11 DEFENDANT PENA ARGUELLES: Not any question nor any
12 doubt.

13 THE COURT: Now as to the charge of conspiring to
14 launder money instruments in violation of 18 U.S. Code,
15 Section 1962D as contained in the superseding information, is
16 this what you did and is this what you are pleading guilty
17 to?

18 DEFENDANT PENA ARGUELLES: Yes, Your Honor.

19 THE COURT: Do you understand that under the
20 Constitution and laws of the United States, you're entitled
21 to a trial by jury on the charge against you? Do you
22 understand this?

23 DEFENDANT PENA ARGUELLES: Yes, Your Honor.

24 THE COURT: If you elect to go to a trial before a
25 jury, you have the right to challenge the composition and

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1 make-up of the jury panel out of which a jury would be
2 selected to hear your case. Do you understand this right?

3 DEFENDANT PENA ARGUELLES: Yes, I do understand.

4 THE COURT: Further, do you understand that at a
5 trial and at every stage of the proceedings against you, you
6 have the right to assistance of counsel?

7 DEFENDANT PENA ARGUELLES: Yes, I do understand.

8 THE COURT: Further, do you understand that you are
9 presumed to be innocent and that the government is required
10 to prove your guilt by competent evidence beyond a reasonable
11 doubt before you can be found guilty, and you do not have to
12 prove that you are innocent. Do you understand this?

13 DEFENDANT PENA ARGUELLES: Yes, I do understand it
14 perfectly.

15 THE COURT: Do you further understand that in the
16 course of a trial, the witnesses for the government would
17 have to come to court and testify in your presence, and your
18 counsel could cross-examine the witnesses for the government,
19 object to evidence offered by the government, and offer
20 evidence on your behalf. Do you understand this?

21 DEFENDANT PENA ARGUELLES: Yes, I understand.

22 THE COURT: Do you further understand that at a
23 trial, while you would have the right to testify, if you
24 chose to do so, you also have the right not to testify, and
25 no inference or suggestion of guilt could be drawn from the

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1 fact that you did not testify. In other words, it cannot be
2 held against you. Do you understand this?

3 DEFENDANT PENA ARGUELLES: Yes, I do understand.

4 THE COURT: Additionally, do you understand that
5 while you are not required to do so and could not be
6 compelled to do so, you have the right at trial to call
7 witnesses on your behalf and to present evidence. Do you
8 understand?

9 DEFENDANT PENA ARGUELLES: Yes, Your Honor.

10 THE COURT: If you plead guilty and I accept your
11 plea, you will waive, in other words, give up your right to a
12 trial and the other rights I just discussed with you, except
13 your right to be represented by your lawyer.

14 By pleading guilty, you convict yourself by your
15 own admission of guilt. There will be no trial. I'll enter
16 a judgment of guilty and sentence you on the basis of your
17 guilty plea. Do you understand what I have just explained to
18 you, Mr. Pena?

19 DEFENDANT PENA ARGUELLES: Yes, sir.

20 THE COURT: Do you understand that if you plead
21 guilty, I might ask you some questions about the offense to
22 which you're pleading, and you will no longer have the right
23 to remain silent about those charges. Do you understand
24 this?

25 DEFENDANT PENA ARGUELLES: Yes, I understand.

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1 THE COURT: Do you understand that if you answer
2 the questions under oath on the record in the presence of
3 your lawyer, your answers may later be used against you in a
4 prosecution for perjury or false statement if your answers
5 are untrue. Do you understand this?

6 DEFENDANT PENA ARGUELLES: Perfectly.

7 THE COURT: Having discussed your rights with you,
8 do you still wish to plead guilty?

9 DEFENDANT PENA ARGUELLES: Yes, Your Honor.

10 THE COURT: And, Mr. Pena, are you pleading guilty
11 because in fact you are guilty and for no other reason?

12 DEFENDANT PENA ARGUELLES: That's true.

13 THE COURT: I will impose a sentence after
14 considering the guidelines established by the U.S. Sentencing
15 Commission. A range of punishment will be determined
16 considering such things as the nature and circumstances of
17 the offense or conduct in the case, and your past criminal
18 history. However, the Sentencing Guidelines are only
19 advisory, and I am not required to sentence you within that
20 guideline range. I can sentence you to a term between a
21 minimum and maximum statutory penalties. Do you understand
22 this?

23 DEFENDANT PENA ARGUELLES: Yes, Your Honor.

24 THE COURT: As part of your plea agreement, you're
25 giving up the right to appeal your sentence as well as the

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1 right to contest your sentence in any type of post-conviction
2 preceding, except in very limited circumstances. Do you
3 understand this?

4 DEFENDANT PENA ARGUELLES: Yes, I do understand it.

5 THE COURT: And have you discussed the waiver of
6 appeal with your attorney?

7 DEFENDANT PENA ARGUELLES: Yes, Your Honor.

8 THE COURT: And do you agree to waive your right to
9 appeal and contest your sentence?

10 DEFENDANT PENA ARGUELLES: Yes, sir.

11 THE COURT: Do you understand the maximum possible
12 penalty under Count One of the superseding information is 20
13 years imprisonment, a supervised release term of up to three
14 years, a fine of up to \$500,000, and a mandatory 100-dollar
15 special assessment. Do you understand this?

16 DEFENDANT PENA ARGUELLES: Yes, sir.

17 THE COURT: There's no longer any possibility,
18 Mr. Pena, of parole in the federal court system. The
19 sentence you receive is the time you'll serve less credit for
20 good time. Do you understand this?

21 DEFENDANT PENA ARGUELLES: Yes, sir.

22 THE COURT: Do you also understand that in addition
23 to any fine or restitution imposed, you may be required to
24 pay the cost of incarceration, if you are incarcerated, and
25 the cost of supervision, if you are given supervised release.

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1 Do you understand this?

2 DEFENDANT PENA ARGUELLES: Yes, I do understand.

3 THE COURT: Supervised release is a term of
4 supervision which you must serve after completing your
5 initial term of confinement. As mentioned earlier, for the
6 type of offense to which you are pleading guilty, it is
7 mandatory that you be given a maximum of three years
8 supervised release in addition to any other imprisonment.
9 Supervised release begins to run at the termination of your
10 imprisonment.

11 While on supervised release, you will be required
12 to comply with various conditions. Failure to comply with
13 any of these conditions could result in revocation of your
14 supervised release term. If the supervised release --
15 rather, let me restate that. If the supervised release is
16 revoked for any violation of its terms, you may be required
17 to serve an additional term of confinement equal to the term
18 of the supervised release to which you were sentenced.

19 That term of imprisonment can be as long as the
20 original term of supervised release, even if the violation
21 and revocation occur at the end of the term. For example,
22 Mr. Pena, if you receive a three-year term of supervised
23 release and at the end of the third year you violate a term
24 or condition of supervised release, you may be sentenced to
25 serve up to three more years in prison without credit for any

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1 time already served on supervised release.

2 In addition, I can, after revocation of a term of
3 supervised release, include in the new sentence a period of
4 incarceration followed by a new term of supervised release,
5 so long as the sum of incarceration of supervised release
6 term does not exceed the original supervised release term.
7 Do you understand supervised release and the consequences it
8 has on the amount of time you may have to serve?

9 DEFENDANT PENA ARGUELLES: Yes, I do understand.

10 THE COURT: Do you have any questions about
11 supervised release, Mr. Pena?

12 DEFENDANT PENA ARGUELLES: No, Your Honor.

13 THE COURT: You're further advised that the Court
14 is required to assess a one-time monetary assessment of \$100.
15 This assessment is mandatory in addition to any fine the
16 Court may impose.

17 Now, Mr. Pena, are you pleading guilty freely and
18 voluntarily and with the full knowledge of the consequences?

19 DEFENDANT PENA ARGUELLES: Yes, sir.

20 THE COURT: Has anyone threatened you, Mr. Pena, or
21 coerced you or forced you in any way to plead guilty?

22 DEFENDANT PENA ARGUELLES: Nobody, sir.

23 THE COURT: Has anyone made any promise to you,
24 other than the plea agreement that induced you to plead
25 guilty?

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1 DEFENDANT PENA ARGUELLES: No, sir.

2 THE COURT: Now you understand, Mr. Pena, that I'm
3 not required to accept the plea agreement. Do you understand
4 this?

5 DEFENDANT PENA ARGUELLES: Yes, I do understand it.

6 THE COURT: If I do not accept the plea agreement,
7 you will be advised in open court, and you will have the
8 opportunity to withdraw your guilty plea. If you persist in
9 your guilty plea after the plea agreement is rejected, if it
10 is rejected, your sentence or disposition of your case may be
11 less favorable to you than that proposed in the plea
12 agreement. Do you understand this?

13 DEFENDANT PENA ARGUELLES: Yes, I do understand.

14 THE COURT: Has anyone made any prediction,
15 prophesy, or promise to you as to what your sentence will be?
16 Let me restate that. Has anyone made any promise or prophesy
17 or prediction to you as to what your sentence will be?

18 DEFENDANT PENA ARGUELLES: No, sir.

19 THE COURT: Okay.

20 MR. GOLDSTEIN: Your Honor, other than the 11C1C
21 agreement.

22 THE COURT: Yes. That's contained in the plea
23 agreement.

24 MR. GOLDSTEIN: Yes, sir.

25 THE COURT: Okay. What, in summary, is the

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1 government's evidence, counsel?

2 MR. STRAUSS: It's about a five-page recitation in
3 the plea agreement, Your Honor. Generally speaking--.

4 MR. GOLDSTEIN: Your Honor, we have signed the
5 factual basis. It is lengthy. My client I believe will
6 advise the Court that he has read it thoroughly and agrees to
7 that factual basis.

8 THE COURT: It involves the number of laundering
9 activity.

10 MR. STRAUSS: The allegations in the factual basis,
11 in brief, show that Mr. Pena accepted money from entities,
12 money that were proceeds from the sale of controlled
13 substances and basically made deposits of those monies --
14 laundered those monies on behalf of the persons who owned the
15 proceeds.

16 THE COURT: Okay.

17 MR. GOLDSTEIN: And, Your Honor, I believe it
18 actually -- those proceeds as well as other -- the proceeds
19 from other illegal conduct.

20 THE COURT: Okay.

21 MR. GOLDSTEIN: And I believe it provides that the
22 proceeds of the above-described conduct were deposited in the
23 United States.

24 THE COURT: Okay. Thank you. Now, Mr. Pena,
25 again, you have reviewed the contents of the plea agreement?

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1 DEFENDANT PENA ARGUELLES: Yes, sir.

2 THE COURT: And in the plea agreement it details a
3 list of activities that you performed. Is that correct?

4 DEFENDANT PENA ARGUELLES: Clearly. Yes, sir.

5 THE COURT: All of which were in violation of the
6 law. Is that correct?

7 DEFENDANT PENA ARGUELLES: That's correct.

8 THE COURT: And you have reviewed the documents
9 with your lawyer and the interpreter who assisted in
10 interpreting the language of the document to you. Is that
11 correct?

12 DEFENDANT PENA ARGUELLES: Yes, Your Honor.

13 THE COURT: Do you have any questions about the
14 plea agreement?

15 DEFENDANT PENA ARGUELLES: No doubt.

16 THE COURT: Now, Mr. Pena, do you agree that if you
17 were to go to trial, the government would produce sufficient
18 witnesses and exhibits to establish your guilt beyond a
19 reasonable doubt?

20 DEFENDANT PENA ARGUELLES: Yes, sir.

21 THE COURT: In other words, if you were to plead --
22 if you wanted to go to trial, do you believe the government
23 could prove the case against you?

24 DEFENDANT PENA ARGUELLES: Yes, sir.

25 THE COURT: Okay. Do you have any questions about

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1 the plea agreement?

2 DEFENDANT PENA ARGUELLES: No, Your Honor.

3 THE COURT: Okay. And is this what you did, that
4 is, what is contained in the plea agreement, is that exactly
5 what you did?

6 DEFENDANT PENA ARGUELLES: That's right.

7 THE COURT: Okay. Now that the charge and the
8 superseding information and the factual basis for it have
9 been read to you, I want to ask you again, Mr. Pena, if you
10 understand the nature of the charge against you?

11 DEFENDANT PENA ARGUELLES: Yes, I do understand it.

12 THE COURT: Do you understand that before you can
13 be found guilty of the charge to which you have pled guilty,
14 the government must prove the facts contained in the plea
15 agreement against you beyond a reasonable doubt. Do you
16 understand that?

17 DEFENDANT PENA ARGUELLES: Yes, I do understand it.

18 THE COURT: Now do you have any questions
19 concerning the charge or the factual basis or the plea
20 agreement?

21 DEFENDANT PENA ARGUELLES: No, sir.

22 THE COURT: And, again, to the charge of conspiring
23 to launder money instruments in violation of 18 U.S. Code,
24 Section 1956H, how do you plead, guilty or not guilty?

25 DEFENDANT PENA ARGUELLES: Guilty.

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1 MR. GOLDSTEIN: Your Honor, may I just add?

2 THE COURT: Is the statute 18 1956H or?

3 MR. STRAUSS: Yes, Your Honor.

4 THE COURT: It's not 1962D?

5 MR. STRAUSS: It's 1956H, Your Honor.

6 THE COURT: Okay.

7 MR. GOLDSTEIN: That is right.

8 THE COURT: Okay. Let me ask you -- I'm sorry,
9 Mr. Goldstein, you were saying something?

10 MR. GOLDSTEIN: And I apologize for interrupting
11 the Court, Your Honor. I just wanted to make it clear for the
12 record that by accepting the general statement regarding the
13 factual basis, my client, I can advise the Court, did not
14 intend to expand what is a fairly lengthy statement of the
15 factual basis beyond that which is contained in the written
16 agreement, Your Honor.

17 THE COURT: I understand.

18 MR. GOLDSTEIN: Thank you.

19 THE COURT: Okay. And, Mr. Pena, is there -- do
20 you have any question about anything that has occurred here
21 this afternoon about the proceeding? Do you have any
22 questions?

23 DEFENDANT PENA ARGUELLES: No questions, Your
24 Honor.

25 THE COURT: Have you understood everything that has

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1 occurred here today?

2 DEFENDANT PENA ARGUELLES: Perfectly, sir.

3 THE COURT: Okay. Then the Court finds the
4 defendant's plea is freely and voluntarily made. The
5 defendant fully understands the nature of the charge and
6 penalty. The defendant understands his constitutional and
7 statutory rights and desires to waive them. The defendant is
8 competent to stand trial, and that there is a factual basis
9 as reflected in the plea agreement to which the defendant has
10 reviewed with lawyers, with his interpreter, and has signed
11 and agreed to. At this time the Court does accept your plea
12 of guilty.

13 (End of Rearraignment.)
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1 UNITED STATES DISTRICT COURT)

2 WESTERN DISTRICT OF TEXAS)

3 I certify that the foregoing is a correct
4 transcript from the record of proceedings in the
5 above-entitled matter. I further certify that the transcript
6 fees and format comply with those prescribed by the Court and
7 the Judicial Conference of the United States.

8 Date signed: January 7, 2016.

9
10 /s/Leticia Rangel

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